

COPY

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Case No. C-1-02-479

JEFFERSON-PILOT LIFE INSURANCE CO.,)
Plaintiff)
)
v.)
)
CHRISTOPHER L. KEARNEY,)
Defendant)

DEPOSITION OF: TODD DITMAR, taken before
Sharon R. Roy, Notary Public Stenographer, pursuant
to Rule 30 of the Massachusetts Rules of Civil
Procedure, at the law offices of ACCURATE COURT
REPORTING, 1500 Main Street, Springfield,
Massachusetts on May 13, 2004 commencing at 9:29 a.m.

A P P E A R A N C E S:

(See Page 2)

Sharon R. Roy
Certified Shorthand Reporter
Registered Professional Reporter

09:47:54 1 MR. ELLIS: Objection.

09:47:54 2 Q. (By Mr. Roberts) Go ahead.

09:47:55 3 A. No, he did not.

09:47:56 4 Q. He did not share with you the substance of
5 any of the testimony?

09:48:00 6 A. No, he did not.

09:48:08 7 Q. Other than Mr. Mills, Mr. Hughes,
8 Mr. Bonsall, Ms. Beattie, and Mr. Ellis, have you
9 discussed today's deposition or the Kearney claim
10 with anyone in the past two weeks?

09:48:20 11 A. Not that I can recall.

09:48:26 12 Q. Did Mr. Ellis share with you that DMS was
13 determined to be in bad faith in a recent jury
14 decision in Hamilton County, Ohio?

09:48:36 15 MR. ELLIS: Objection. And you
16 don't have to answer that, that's privileged.

09:48:39 17 Q. (By Mr. Roberts) Are you mindful, sir,
18 from any source that there was a jury determination
19 in Hamilton County, Ohio last month that DMS was in
20 bad faith in its handling of a disability claim?

09:48:49 21 MR. ELLIS: I also object that that
22 misstates the fact. There is no jury finding
23 of bad faith in Ohio other than during a
24 summary jury trial which was conducted in a

1 right-hand column three or four lines down?

11:00:32 2 A. Yes.

11:00:41 3 Q. Have you ever seen anywhere a list of
4 actions performed on the Kearney claim?

11:00:46 5 A. No, I have not.

11:00:50 6 Q. Was there ever a written strategy prepared
7 on the Kearney claim?

11:00:55 8 A. I do not believe so.

11:00:56 9 Q. Is it the policy of DMS to develop
10 strategies for each claim?

11:01:01 11 A. No.

11:01:12 12 Q. Do you require the persons that work
13 underneath you to have a certain planned approach to
14 their administration of a claim?

11:01:29 15 A. No.

11:01:30 16 MR. ROBERTS: Let's go off the
17 record for a second.

11:01:31 18 THE VIDEOGRAPHER: Going off the
19 record at 11 a.m.

11:12:57 20 (A recess was taken)

11:12:57 21 (Exhibit 30, marked)

11:12:58 22 THE VIDEOGRAPHER: Back on record at
23 11:12 a.m.

11:13:09 24 Q. (By Mr. Roberts) Mr. Ditmar, I've marked

1 as Exhibit 30 several documents all combined into one
2 exhibit which we'll call 30. The first two pages of
3 Exhibit 30 are 2001 Yearly Performance Plan and
4 Review of Lance Faniel, which is Bates labeled DMS
5 018 and DMS 019.

11:13:35 6 MR. ELLIS: Do you have copies of
7 these for me, Counsel?

11:13:38 8 Q. (By Mr. Roberts) The next three pages are
9 2002 Yearly Performance Plan and Review of John
10 Midghall marked DMS 047, DMS 048, and DMS 049.

11:13:49 11 The next document is 2001 Yearly
12 Performance Plan and Review of John Midghall marked
13 DMS 050 and DMS 051.

11:14:02 14 The next is 2001 Yearly Performance Plan
15 and Review of Brian Wentworth marked DMS 025 and 026.

11:14:13 16 The next is Yearly Performance Plan and
17 Review, Brian Wentworth, signed by John Midghall,
18 labeled DMS 027 and DMS 028.

11:14:29 19 The next is Yearly Performance Plan and
20 Review of Brian Wentworth marked DMS 029, 030, and
21 031.

11:14:40 22 The next is John Graff Yearly Performance
23 Plan and Review marked DMS 060 and DMS 061.

11:14:53 24 The next is marked DMS 077, 78, 79, 80 and

1 break for lunch, please.

11:55:18 2 MR. ROBERTS: Absolutely.

11:55:19 3 THE VIDEOGRAPHER: Going off record
4 at 11:54 a.m.

01:22:38 5 (A recess was taken)

01:23:06 6 THE VIDEOGRAPHER: Back on record at
7 1:23 p.m.

01:24:13 8 Q. (By Mr. Roberts) Mr. Ditmar, you are under
9 oath still. Did you discuss your testimony with
10 Mr. Ellis during the lunch break?

01:24:18 11 A. No.

01:24:20 12 Q. Do you refer to Mr. Ellis as "Big Brother"?

01:24:23 13 A. No.

01:24:24 14 Q. Have you ever heard that expression?

01:24:27 15 A. Vaguely.

01:24:28 16 Q. Regarding Mr. Ellis?

01:24:31 17 A. No.

01:24:32 18 Q. Do you perform performance evaluations of
19 your subordinates that work in the Jefferson-Pilot
20 block of business?

01:24:38 21 A. Yes.

01:24:39 22 Q. For how many years have you performed that
23 function?

01:24:44 24 A. Since 2000.